IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.2870 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL MANUBHAI KHODIDAS

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2870 of 2002

MR JS YADAV for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED BY DS for Respondent No. 1-2,9/1,11/1

MR PK JANI for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 3

MR TUSHAR MEHTA for Respondent No. 4,6-7

UNSERVED-REFUSED (R) for Respondent No. 4,5,8-9/1,11,20,22-21

MR MEHUL SHARAD SHAH for Respondent No. 10,13-19

NOTICE UNSERVED for Respondent No. 12,21

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 30/06/2004

ORAL JUDGEMENT

1. What is challenged in the present petition under Article 226 of the Constitution of India is to issue an

appropriate writ, order or direction directing respondent No.2 to immediately give to the petitioner peaceful and vacant possession of the entire land under Final Plot No.51 by immediately removing illegal encroachment on north side of Final Plot No.51 (original Plot No.47) with all consequential and incidental orders.

2. This petition was admitted on 09-04-2003 and by way of interim relief following direction was issued by this Court (Coram : Jayant Patel, J) :-

> "The Chief Officer of respondent No.2 Municipality shall report to this Court regarding the full implementation of allotment of the land of Final Plot No.15 within a period of 15 days from today. He shall also submit necessary record regarding the steps taken by the Municipality for implementation of the scheme so far as it relates to Final Plot No.51. Such explanation shall also include as to why the action should not be ordered against erring office bearers of the Town Planning Authority or Town Planning Committee of the Municipality as the case may be, for alleged failure to discharge statutory duty under the Act."

3. Thereafter, the matter was adjourned from time to time and ultimately the matter came up for hearing before this Court (Coram : A.R. Dave, J) on 27-04-2004. It seems that earlier after the order dated 09-04-2004, the petitioner and the private respondents, who were in possession of the land in question, were encroaching and trying to find out some way. However, on 27-04-2004 Mr.P.K.Jani, learned advocate appearing for respondent No.2 - Municipality, has submitted that it is not possible to accede to any request, which might come from any other party, and, therefore, he has submitted that all possible effort shall be made to implement the order dated 09-04-2003. In spite of the aforesaid facts, the order passed by this Court dated 09-04-2003 was not complied with and, therefore, when the matter came up for hearing before this Court on 22-06-204, as a last chance, respondent No.2 was directed to comply with the said order dated 09-04-2003 on or before 30-06-2004 and submit its report before this Court. Today, an affidavit-in-reply has been filed by the Chief Officer of Mehsana Municipality, respondent No.2 herein. He has tendered explanation which is considered by this Court. He has also submitted that on 28-06-2004 with the help of police the encroachment on the land has been removed and now there is an open piece of land which can be allotted

to the petitioner as per the final Town Planning Scheme. Considering the explanation which is given in the affidavit-in-reply this Court is of the opinion, at this stage, nothing further is required to be done as, prima facie, this Court is of the opinion that there were some justifiable reasons which are explained in the affidavit-in-reply for which the delay caused in complying the order dated 09-04-2003 and, therefore, the explanation given by respondent no.2 is found to be just and proper.

4. So far as the prayer of handing over the peaceful and vacant possession of Final Plot No.51 as per the Town Planning Scheme is concerned, Mr.Jani, learned advocate for the respondent Municipality, on the instructions of his client, states that in view of the removal of the encroachment they are ready and willing to hand over possession of the land to the petitioner and as such they are in search of the petitioner but he is not available. However, as and when the petitioner comes to the respondent No.2 they will immediately hand over Final Plot No.51. Respondent No.2 is directed to act by the aforesaid statement. In view of the aforesaid statement noting further requires to be done in the present petition.

5. At this stage Mr.Tushar Mehta and Mr.M.S.Shah, learned advocates appearing for the private respondents, state that they are entitled to some compensation under the provisions of the Gujarat Town Planning Act. In this petition no relief can be granted in favour of the private respondents. This Court is not expressing any opinion whether the private respondents are entitled for compensation or not. It will be open for the private respondents to take appropriate steps in accordance with law, if they are entitled for compensation under the provision of the Act.

6. With these observations and directions the petition stands disposed of accordingly. Rule discharged.

Sd/-

[M.R.SHAH, J]

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'Bhavesh'